

Federal Housing Finance Board

§ 908.25

any member thereof, a decisional employee of the Finance Board assigned to that proceeding, or any other person who is or may reasonably be expected to be involved in the decisional process.

(2) A communication that does not concern the merits of a proceeding under this part, such as a request for status of the proceeding, does not constitute an *ex parte* communication.

(b) *Prohibition of ex parte communications.* From the time that a notice commencing a proceeding under this part is issued by the Finance Board until the date that the Board of Directors issues its final decision pursuant to § 908.65, no person referred to in paragraph (a)(1)(i) of this section shall knowingly make or cause to be made an *ex parte* communication. The Board of Directors, any member thereof individually, the presiding officer, or an employee of the Finance Board, shall not knowingly make or cause to be made an *ex parte* communication.

(c) *Procedure upon occurrence of ex parte communication.* If an *ex parte* communication is received by any person identified in paragraph (a) of this section, that person promptly shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within ten days of receipt of service of the *ex parte* communication or the written record of an oral communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or representative for a party who makes an *ex parte* communication, or who encourages or solicits another person or entity to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Board of Directors or the presiding officer, including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue that is the subject of the prohibited communication.

(e) *Consultations by presiding officer.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the presiding officer may not consult a person or party on any matter relevant to the merits of a proceeding, unless on notice and opportunity for all parties to participate.

(f) *Separation of functions.* An employee or agent engaged in the performance of investigative or prosecuting functions for the Finance Board in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or Board of Directors' review of the recommended decision under § 908.65, except as a witness or counsel in a hearing.

§ 908.25 Filing of papers.

(a) *Filing.* Any papers required to be filed shall be addressed to the presiding officer and filed with the Finance Board, 1777 F Street, NW., Washington, DC 20006.

(b) *Manner of filing.* Unless otherwise specified by the Finance Board or the presiding officer, filing shall be accomplished by:

- (1) Personal service;
- (2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;
- (3) Mailing by first class, registered, or certified mail; or
- (4) Transmission by electronic media upon any conditions specified by the Finance Board or the presiding officer. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed—*(1) *Form.* All papers must set forth the name, address and telephone number of the representative or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ × 11-inch paper and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 908.23.

(3) *Caption.* All papers filed must include at the head thereof, or on a title

page, the name of the Finance Board and of the filing party, the title and docket number of the proceeding and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Finance Board or the presiding officer, an original and one copy of all documents, papers, transcripts of testimony, and exhibits shall be filed.

§ 908.26 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers or serving a subpoena shall serve a copy upon the representative of record for each party to the proceeding so represented and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

- (1) Personal service;
- (2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;
- (3) Mailing by first class, registered, or certified mail; or
- (4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 908.25(c).

(c) *By the Finance Board or the presiding officer.* (1) All papers required to be served by the Finance Board or the presiding officer upon a party who has appeared in the proceeding in accordance with § 908.72 may be served by any means specified in paragraph (b) of this section.

(2) If a notice of appearance has not been filed in the proceeding for a party in accordance with § 908.72, the Finance Board or the presiding officer shall make service upon such party by any of the following methods:

- (i) By personal service;
- (ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;
- (iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or gen-

eral agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Subject to applicable provisions in this part, service of a subpoena may be made:

- (1) By personal service;
- (2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;
- (3) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;
- (4) By registered or certified mail addressed to the person's last known address; or
- (5) By any other method reasonably calculated to give actual notice.

(e) *Area of service.* Service in any State, commonwealth, possession, territory of the United States or the District of Columbia on any person doing business in any State, commonwealth, possession, territory of the United States or the District of Columbia, or on any person as otherwise permitted by law, is effective without regard to the place where the hearing is held.

(f) *Proof of service.* Proof of service of papers filed by a party shall be filed before action is taken thereon. The proof of service, which shall serve as prima facie evidence of the fact and date of service, shall show the date and manner of service and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of a representative of record. However, failure to file proof of service contemporaneously with the papers shall not affect the validity of actual service. The presiding officer may allow the proof to be amended or